

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule LSA Document # 15-385

DIGEST

Amends 410 IAC 16.2-1.1-19, 410 IAC 16.2-1.1-55, 410 IAC 16.2-3.1-16, 410 IAC 16.2-3.1-23 and 410 IAC 16.2-7-4 to replace the term “mental retardation” with “intellectual disability”.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

410 IAC 16.2-1.1-19; 410 IAC 16.2-1.1-55; 410 IAC 16.2-3.1-16; 410 IAC 16.2-3.1-23; 410 IAC 16.2-7-4

SECTION 1. 410 IAC 16.2-1.1-19 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-1.1-19 "Developmentally disabled" defined

Authority: IC 16-28-1-7

Affected: IC 16-28

Sec. 19. "Developmentally disabled" means a personal disability that:

(1) is attributable to:

- (A) ~~mental retardation~~ **intellectual disability**, cerebral palsy, epilepsy, or autism;
- (B) any other condition found to be closely related to ~~mental retardation~~ **intellectual disability** because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services; or
- (C) dyslexia resulting from a disability described in this section;

(2) originates before the person is eighteen (18) years of age; and

(3) has continued or is expected to continue indefinitely and constitutes a substantial handicap to the person's ability to function normally in society.

(Indiana State Department of Health; 410 IAC 16.2-1.1-19; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1904, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA)

SECTION 2. 410 IAC 16.2-1.1-55 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-1.1-55 "Qualified intellectual disability professional" or "QIDP" defined

Authority: IC 16-28-1-7

Affected: IC 16-28; IC 25-22.5-5; IC 25-23-1-11; IC 25-27; IC 25-35.6-3

Sec. 55. "Qualified ~~mental retardation~~ **intellectual disability** professional" or "~~QMRP~~ **QIDP**" means a person who has specialized training or one (1) year of experience in treating the ~~mentally retarded~~ **intellectually disabled** and is one (1) of the following:

- (1) A psychologist with a master's degree from an accredited program.
- (2) A licensed doctor of medicine or osteopathy.
- (3) An educator with a degree in education from an accredited program.
- (4) A social worker with a bachelor's or master's degree in social work from an accredited program or a bachelor's or master's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker.

(5) An occupational therapist who:

(A) is a graduate of an occupational therapy curriculum accredited jointly by the council on medical education of the American Medical Association and the American Occupational Therapy Association;

(B) is eligible for certification by the American Occupational Therapy Association under its requirements in effect on September 29, 1978; or

(C) has two (2) years of appropriate experience as an occupational therapist and has achieved a satisfactory grade on the approved proficiency examination, except that such determinations of proficiency shall not apply with respect to persons initially licensed by the state or seeking initial qualifications as an occupational therapist after December 31, 1977.

(6) A speech pathologist or audiologist licensed pursuant to IC 25-35.6-3.

(7) A registered nurse licensed pursuant to IC 25-23-1-11.

(8) A therapeutic recreation specialist who is a graduate of an accredited program.

(9) A rehabilitative counselor who is certified by the Committee of Rehabilitation Counselor Certification.

(10) A physical therapist who is licensed pursuant to IC 25-27.

(Indiana State Department of Health; 410 IAC 16.2-1.1-55; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1908, eff Mar 1, 2003; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA)

SECTION 3. 410 IAC 16.2-3.1-16 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-16 Admissions policy

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1

Sec. 16. (a) The facility must not:

(1) require residents or potential residents to waive their rights to Medicare or Medicaid; or

(2) require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(b) The facility must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(c) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the state plan, any gift, money, or donation, or other consideration as a precondition of admission, expedited admission, or continued stay in the facility. However, a nursing facility may: (1) charge a resident who is eligible for Medicaid for items and services the resident has requested and received and that are not specified in the state plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; or

(2) solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid-eligible resident, or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid-eligible resident.

(d) A facility must not admit, on or after January 1, 1989, any new residents with:

(1) mental illness unless the state mental health authority or its designee has determined, based

upon an independent physical and mental evaluation performed by a person or entity other than the state mental health authority or its designee, prior to admission that:

(A) because of the physical and mental condition of the individual, the individual requires the level of services provided by the facility; and

(B) if the individual requires such level of services, whether the individual requires specialized services for mental illnesses or services of a lesser intensity; or

(2) ~~mental retardation~~ **intellectual disability** unless the state ~~mental retardation~~ **intellectual disability** authority or its designee has determined prior to admission that:

(A) because of the physical and mental condition of the individual, the individual requires the level of services provided by the facility; and

(B) the individual requires such level of services, whether the individual requires specialized services or services of a lesser intensity for ~~mental retardation~~ **intellectual disability**.

(e) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (d) is a deficiency; and

(2) subsection (a), (b), or (c) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-16; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1540, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA)

SECTION 4. 410 IAC 16.2-3.1-23 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-23 Specialized rehabilitative services

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1

Sec. 23. (a) If specialized rehabilitative services, such as, but not limited to, physical therapy, speech-language pathology, occupational therapy, and health rehabilitative services for mental illness and ~~mental retardation~~ **intellectual disability**, are required in the resident's comprehensive care plan, the facility must:

(1) provide the required services; or

(2) obtain the required services from an outside resource from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(c) For purposes of IC 16-28-5-1, a breach of subsection (a) or (b) is a deficiency. *(Indiana State Department of Health; 410 IAC 16.2-3.1-23; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1548, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA)*

SECTION 5. 410 IAC 16.2-7-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-7-4 Resident programs

Authority: IC 16-28-1-7

Affected: IC 16-28-5-1

Sec. 4. (a) The facility shall provide a program for developmentally disabled individuals, which assures the following:

(1) There is a designated staff member qualified by a minimum of two (2) years experience with developmentally disabled individuals, or through completion of the council approved training

program on developmental disabilities, responsible for the program. If the designated staff member does not qualify as a qualified ~~mental-retardation~~ **intellectual disability** professional, as defined in ~~410 IAC 16.2-1-32~~ **410 IAC 16.2-1.1-55**, the designee must be supervised by a qualified ~~mental-retardation~~ **intellectual disability** professional or the facility must have a consultant qualified ~~mental-retardation~~ **intellectual disability** professional.

(2) The designated staff member is responsible for the development and implementation of the habilitation program which shall include an assessment of need for community services and a care habilitation plan based upon a diagnostic screening.

(3) The habilitation plan which comprises the developmental component of the care plan, or in residential care the individual needs assessment, shall be reviewed and updated in accordance with the scheduled review of the overall care plan or as changes in the resident's condition indicate.

(4) Sheltered workshop programs, adult day activity programs, work activity programs, and work adjustment programs designed to meet the developmental program needs of developmentally disabled persons shall be provided outside the facility and in other community settings. These programs shall be provided by community resources whose programs are approved by the Indiana state department of public welfare in consultation with the Indiana department of mental health. A facility is in compliance with this rule, even if it is unable to obtain developmental programs from approved community resources, if:

(A) the facility has documented that it will arrange for the provision of the services from a community resource, and the community resource is willing to provide the programs and has developed a plan for implementation within a mutually agreed upon time frame; or

(B) the facility has documented that a community resource is unavailable or is unwilling to provide the services.

(b) For purposes of IC 16-28-5-1, a breach of subsection (a) is a noncompliance. (*Indiana State Department of Health; 410 IAC 16.2-7-4; filed May 2, 1984, 2:50 p.m.: 7 IR 1501; errata, 7 IR 1941; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1587, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA; readopted filed Sep 11, 2013, 3:19 p.m.: 20131009-IR-410130346RFA*)